Supreme Court, U.S.
FILED
JAN 21 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-850 (2)

In the Supreme Court of the United States

OCTOBER TERM, 1985

GEORGE KIRK PURVIS AND
BARBARA JEAN SOLOMOS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

CHARLES FRIED
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

BEST AVAILABLE COPY

9pp

TABLE OF AUTHORITIES

Page

Cases:

Delaware v. *Prouse*, 440 U.S. 648 4

Maryland v. *Macon*, No. 84-778 (June 18, 1985) 4

United States v. *Arra*, 630 F.2d 836 5

United States v. *Cilley*, No. 84-5199 (9th Cir. Dec. 20, 1985) 4

United States v. *Eagon*, 707 F.2d 362, cert. denied, 464 U.S. 991 4

United States v. *Green*, 671 F.2d 46, cert. denied, 457 U.S. 1135 3

United States v. *Piner*, 608 F.2d 358 4

United States v. *Pinto-Mejia*, 720 F.2d 248, modified on rehearing, 728 F.2d 142 5

United States v. *Pringle*, 751 F.2d 419 ..... 4, 5

United States v. *Streiful*, 665 F.2d 414 4

United States v. *Villamonte-Marquez*, 462 U.S. 579 ..... 3, 4

United States v. *Watson*, 678 F.2d 765, cert. denied, 459 U.S. 1038 ..... 3, 4

Constitution and statutes:

U.S. Const. Amend. IV 1, 3, 4

14 U.S.C. 89(a) 3, 5

19 U.S.C. 1581(a) 3

21 U.S.C. 955a(a) 1

In the Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-850

GEORGE KIRK PURVIS AND
BARBARA JEAN SOLOMOS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners contend that the stopping and boarding of their vessel on the high seas by Coast Guard officers violated the Fourth Amendment.

1. After waiving their right to a jury and consenting to trial on the record of the previously-held suppression hearing, petitioners were convicted in the United States District Court for the Southern District of Florida of possessing marijuana with intent to distribute while aboard a United States vessel on the high seas, in violation of 21 U.S.C. 955a(a). Pet. App. 1-2. Each petitioner was sentenced to 30 months' imprisonment, to be followed by a three-year special parole term. The court of appeals affirmed (Pet. App. 1-12).

During the early morning hours of June 15, 1984, the Coast Guard cutter *Valiant* came upon the United States flag vessel *Pride* on the high seas in the Yucatan Channel approximately 100 miles north of the Yucatan Peninsula (Tr. 7-8).[1] The *Valiant* attempted to communicate with the *Pride* by radio but received no response (Tr. 10). Later, an individual aboard the *Pride* returned the Coast Guard's transmissions and informed the Coast Guard that the *Pride's* homeport was Beaumont, Texas, and that the vessel was sailing from Cozumel, Mexico, to Alabama (Tr. 8).

At approximately 1:00 a.m., a boarding party was dispatched from the *Valiant* to conduct a document and safety inspection and to determine if the *Pride* was in compliance with all applicable federal laws (Tr. 101). While the *Valiant* initially circled the *Pride*, the Coast Guard boarding party noticed that the *Pride's* registration numbers were improperly displayed (Tr. 13-14, 88). As the boarding party came directly alongside the *Pride*, the officers detected a strong odor of marijuana (Tr. 88). Once aboard the vessel, the Coast Guard officers observed in plain view green plastic-wrapped bales of marijuana stacked about four feet high (Tr. 89-90).

Petitioner Purvis identified himself to the boarding party as the *Pride's* captain and produced the vessel's documentation, which indicated that the vessel was registered in Texas (Tr. 24). After petitioners were arrested, the boarding party completed the safety and documentation check throughout the communal and working areas of the *Pride* (Tr. 28, 101-102). During the course of the inspection, the officers found additional marijuana hidden under the seats in the cockpit (Tr. 21).

---

[1] "Tr." refers to the transcript of the suppression hearing, contained in Volume III of the Record on Appeal.

2. Petitioners contend that the stopping and boarding of the *Pride* violated the Fourth Amendment because the Coast Guard lacked probable cause or a reasonable suspicion of ongoing criminal activity.[2] However, the decision of the court of appeals is correct, there is no conflict among the circuits on this issue, and this Court has consistently denied petitions presenting the issue raised here. See, *e.g.*, *United States* v. *Watson*, 678 F.2d 765 (9th Cir.), cert. denied, 459 U.S. 1038 (1982); *United States* v. *Green*, 671 F.2d 46 (1st Cir.), cert. denied, 457 U.S. 1135 (1982). Accordingly, review by this Court is unwarranted.

Under 14 U.S.C. 89(a), the Coast Guard "may at any time go on board of any vessel subject to the jurisdiction, or to the operation of any law, of the United States, address inquiries to those on board, examine the ship's documents and papers, and examine, inspect, and search the vessel and use all necessary force to compel compliance." The stop and boarding in this case was fully authorized by that statute. The *Pride* was registered in the United States (Pet. App. 4), and, contrary to petitioners' claim (Pet. 7, 18-19), the evidence indicated that the stopping and boarding was conducted for the purpose of determining if the *Pride* was in compliance with all applicable federal laws, including those pertaining to documentation and safety. Petty Officer Royce, a member of the boarding party, offered undisputed testimony to that effect (Tr. 101). Moreover, in *United States* v. *Villamonte-Marquez*, 462 U.S. 579 (1983), this Court held that Customs officials may board a vessel on inland waters under a similar provision, 19 U.S.C. 1581(a), without any suspicion of wrongdoing in order to conduct a document inspection and also ruled that such a boarding is

---

[2]Petitioners concede (Pet. 18 n.2) that the marijuana found aboard the *Pride* was lawfully seized if the initial stop and boarding were proper.

reasonable under the Fourth Amendment. The decision in *Villamonte-Marquez* clearly dooms petitioners' claim here.[3]

Petitioners erroneously assert (Pet. 11-14) that the court of appeals' decision conflicts with *United States* v. *Piner*, 608 F.2d 358 (9th Cir. 1979). In *Piner*, the court held that the suspicionless boarding of a vessel for the purpose of conducting a safety and documentation check could be conducted only during daylight hours. But see *United States* v. *Eagon*, 707 F.2d 362, 364-365 (9th Cir. 1982), cert. denied, 464 U.S. 991 (1983) (upholding suspicionless night-time boarding of vessel, pursuant to administrative plan, for safety and documentation check); *United States* v. *Watson, supra* (same). However, *Piner* was decided before *Villamonte-Marquez* and relied upon decisions involving automobile stops, such as *Delaware* v. *Prouse*, 440 U.S. 648 (1979). See 608 F.2d at 361. *Villamonte-Marquez* rejected the analogy to those cases (see 462 U.S. at 588-589), and the Ninth Circuit has since ruled that the Coast Guard may stop and board vessels on the high seas in the absence of any suspicion of criminal activity for the purpose of conducting a document or safety inspection. See *United States* v. *Cilley*, No. 84-5199 (9th Cir. Dec. 20, 1985), slip op. 6-11.[4]

---

[3]It is immaterial that the officers may have stopped the vessel in part because they suspected drug smuggling, so long as they were entitled to conduct a documentation and safety check and did not act in excess of that authority until justified in doing so. See *Villamonte-Marquez*, 462 U.S. at 584 n.3; see also *Maryland* v. *Macon*, No. 84-778 (June 17, 1985), slip op. 7.

[4]Nor does the court of appeals' decision here conflict with *United States* v. *Streifel*, 665 F.2d 414 (2d Cir. 1981), or *United States* v. *Pringle*, 751 F.2d 419 (1st Cir. 1984). *Streifel* was decided prior to *Villamonte-Marquez*, and the court upheld the stop and boarding of a vessel on the ground that there was a reasonable suspicion of ongoing criminal activity. 665 F.2d at 424-425. Although, the court stated that the Coast Guard must have a reasonable suspicion before stopping and

Moreover, at the time the Coast Guard officers in this case actually boarded the *Pride*, they had a reasonable suspicion that it held narcotics and that federal navigation laws were also being violated. The record shows that, upon circling and approaching the *Pride*, the members of the boarding party noticed that its registration numbers were improperly displayed, and one member detected a strong odor of marijuana (Tr. 13, 88). Accordingly, even if the initial stop could not be justified on this basis and can be justified only on the basis of 14 U.S.C. 89(a), the actual boarding of the vessel was justified on the basis of a reasonable suspicion.

---

boarding a vessel to conduct a search for narcotics (*id.* at 419-423), the court expressly reserved the issue of whether such a suspicion is also necessary to conduct an administrative search, such as a safety and documentation check (*id.* at 420 n.8). Accordingly, *Streifel* did not resolve the issue presented here. The Second Circuit has also not decided this question since *Streifel*. See *United States* v. *Pinto-Mejia*, 720 F.2d 248, 262 (1983), modified on rehearing, 728 F.2d 142 (2d Cir. 1984) (stop and boarding justified on the basis of a reasonable suspicion). In *Pringle*, the court stated in dictum that a reasonable suspicion is necessary to stop and board a vessel in order to investigate criminal activity, but the court held that the Coast Guard may stop and board a vessel under 14 U.S.C. 89(a) in the absence of any suspicion of criminal conduct in order to conduct a safety and document inspection (751 F.2d at 424). Accord *United States* v. *Arra*, 630 F.2d 836, 841-842 (1st Cir. 1980).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

JANUARY 1986